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January 3, 2007

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 5878

Dear Mr. Jordan:

The undersigned counsel represents the Arizona Democratic Party, Arizona State Democratic Central Committee, Arizona Democratic Party-North Carolina Account,¹ and Carter Olson, as Treasurer ("collectively referred to as "ADP") in the above referenced matter. This matter was generated by a complaint filed by the Arizona Republican Party. The complaint appears to allege that, during the 2006 election cycle, the ADP used non-federal funds to engage in "federal election activities." In fact, the conduct that is alleged to have been undertaken by the ADP in this matter is entirely lawful and the complaint must be dismissed for the failure to allege any facts whatsoever that would establish any violation of the Federal Election Campaign Act, as amended (the "Act") or of the Commission's rules. 11 C.F.R. § 111.4(d).

The complaint focuses on contributions made to the ADP's non-federal account by Jim Pederson, the Democratic nominee for the United States Senate in Arizona in 2006. The complaint suggests that the mere fact of these contributions is indicative of some type of "scheme" to unlawfully use non-federal dollars for "federal election activity. However, each transaction referenced in the complaint is entirely lawful. The complaint breaks out the "scheme" into three parts:

¹ It should be noted that these are not separate entities and that the Arizona State Democratic Central Committee is the proper respondent. Arizona Democratic Party-North Carolina Account is a separate reporting entity and bank account of the Arizona State Democratic Central Committee. No entity called the Arizona Democratic Party exists.

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COUNSEL**

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First, the complaint alleges that Mr. Pederson has contributed over \$1 million dollars to the ADP during 2006. It is well known that Jim Pederson, who served as the ADP's chair for three years prior to running for United States Senate, has for years been the most generous donor to ADP. Mr. Pederson had committed to continue to be a generous supporter of the ADP, even after he left as chair to run for U.S. Senate. Mr. Pederson's contributions of personal funds to a state party's non-federal account are, of course, entirely lawful, and the legality of those contributions is not affected in any way by his candidacy for the United States Senate. See FEC Advisory Opinion 2004-25.

Second, the complaint alleges that the ADP violated the Commission's rules issued pursuant to the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by using non-federal monies for "federal election activities." In that regard, the complaint points to "swaps" undertaken by the ADP with other Democratic state party committees. These "swaps" consisted of the ADP contributing non-federal funds to the non-federal account of other state party committees and receiving federal funds from those same Democratic state party committees. This practice of making such transfers has been very common in both the Democratic and Republican parties for several years. Although the practice may be controversial (see attached articles chronicling the history of "swapping"), it is entirely lawful. The ADP has transferred non-federal funds to the non-federal account of state party committees for several years. These committees have deposited those funds into their non-federal account and may not use such funds in connection with any federal elections, or as "Levin Funds." See 2 U.S.C. § 441i(b). State party committees that have received such contributions from the ADP have contributed their own federally permissible funds to the ADP from its federal accounts, which consist solely of federal funds.

This practice of transferring non-federal and federal funds among state party committees is entirely lawful, and is clearly contemplated by the free transferability of funds by both federal and state laws. The Act, of course, specifically permits unlimited transfers between and amongst state party committees. 2 U.S.C. § 441a(a)(4). In fact, the Commission has already publicly acknowledged that the practice of a state party transferring federal funds to another state party committee that has transferred non-federal funds to the first state party, is entirely lawful. See "In Trades Between Party Committees, Not All Dollars Are Equal", *Washington Post*, February 18, 1997, p. A07.² In addition, nothing in the Bipartisan Campaign Reform Act of 2002 ("BCRA") made such transfers unlawful. Of course, this practice of making such transfers was very much well known and reported prior to the passage of the BCRA, and Congress, if it had wished to do so, could have banned such transfers through legislation.³ The only

² Although the Commission has not previously considered the legality of swaps as a formal matter, three Commissioners have previously held that two independently legal transactions cannot be conflated into an illegal transaction. This interpretation was later upheld by the United States Court of Appeals for the District of Columbia. MUR 4250, *Statement of Reasons of Chairman Darryl Wold and Commissioners Lee Ann Elliott and David Mason*, February 11, 2000; *In re Sealed Case*, 223 F. 3d 775, 782 (D.C. Cir. 2000) ("[the Commission's] view that there is no basis for treating the several legally distinct transactions as one is reasonable.")

³ In fact, during the campaign finance reform debates during the 105th Congress, Congressmen Asa Hutchinson and Tom Allen introduced a substitute bill to H.R. 2183 that, among other things, would have

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apparent effect that the BCRA had on such transfers is that funds received from another state party committee may not be used as the federal portion of federal election activities if it is matched with Levin funds. 2 U.S.C. § 441i(b)(2)(B)(iv)(I). In that instance, such funds may only be used for federal election activities they are paid for solely with 100% federal funds. As a general rule, the ADP maintains any funds received by it from another state or local party committee in a segregated federal account. Such funds are used exclusively for operating costs and federal election activities that are paid for exclusively with federal funds. Thus, the ADP's practice of "swapping" funds, is an entirely lawful and common practice that is undertaken by both Democratic and Republican state party committees.⁴ Furthermore, the federal funds received by ADP have been used in full compliance with the FECA and the Commission's regulations.

Third, the complaint characterizes these transfers as a "scheme" between the ADP and Mr. Pederson to use his contributions in connection with federal elections, specifically, his own campaign. This allegation is entirely false. Although Mr. Pederson has been a generous contributor of the party for many years, the decision to transfer some of the ADP's non-federal funds to other state parties was made solely by ADP staff, and was not made in consultation with Mr. Pederson, or with any agent of Mr. Pederson or his Senate campaign. Indeed, the ADP has never consulted any donor about the use made of any non-federal funds contributed by such donor.

Due to the ability of the ADP to accept unlimited contributions from individuals under Arizona law, the ADP is commonly in possession of excess non-federal dollars. The ADP, for many years, has contributed those funds to the non-federal accounts of other state Democratic party committees as an incentive for the those committees to contribute federal funds to the ADP. Mr. Pederson did not participate in those transactions during 2006, nor to the best of the ADP's knowledge, was Mr. Pederson in any way aware of the transfers that were undertaken that are the basis of this complaint.⁵ Due to Mr. Pederson's lack of knowledge and participation in these "swaps" there was no "scheme" between the ADP and Mr. Pederson to use his contributions in connection with federal elections.

Although Mr. Pederson's name appears in reports filed with the North Carolina election authorities, the inclusion of Mr. Pederson's contributions is merely an accounting and disclosure requirement of North Carolina law and in no way implies that

banned transfers between state parties to ban the practice of swapping. However, the substitute amendment failed and the version of the bill that ultimately passed the House of Representatives—the original Shays-Meehan bill that formed the basis for BCRA—did not include this provision. 1998 H.R. 2183, 105th Congress.

⁴ It should be noted that the Commission's recent Advisory Opinion 2006-33 further acknowledges the legality of transfers of the type at issue in this complaint. In that opinion, the Commission concluded that a corporate PAC may contribute non-federal corporate funds to its affiliates as an incentive for their affiliated to raise additional federal funds into the PAC's federal account.

⁵ Mr. Pederson was quoted in the *East Valley Tribune* that he was not aware of the swap until news reports surfaced about it. *State GOP calls for Pederson Campaign Probe*, *East Valley Tribune*, November 4, 2006 ("I didn't know about it until today," Pederson said. "What happens after we contributed to the state party is up to the party").

Mr. Pederson's contribution was earmarked or otherwise designated for use for any contribution to the North Carolina Democratic Party or any other state Democratic Party. All contributions made by Mr. Pederson were disclosed and handled in strict compliance with federal, Arizona and other state laws. The complaint nowhere suggests otherwise.

Based on the above, the complaint fails to allege any facts that would establish any violation of the Act or the Commission's rules. Accordingly, this complaint must be dismissed by the Commission. If you have any additional questions regarding this matter, please contact the undersigned.

Sincerely,



Neil Reiff
Stephen Hershkowitz
Counsel to the ADP, and Carter
Olson, as Treasurer

***In Trades Between Party Committees, Not All Dollars Are Equal The Washington Post
February 18, 1997, Tuesday, Final Edition***

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February 18, 1997, Tuesday, Final Edition

SECTION: A SECTION; Pg. A07

LENGTH: 1340 words

HEADLINE: In Trades Between Party Committees, Not All Dollars Are Equal

BYLINE: Ira Chinoy, Washington Post Staff Writer

BODY:

San Jose stockbroker Jerry Estruth was running as a Democrat for a vacant congressional seat in a special election in 1995 and had to raise hundreds of thousands of dollars in just a few weeks because of the compressed schedule.

The race attracted nationwide attention, so it was not particularly surprising at the time when one contribution came from a source nearly 3,000 miles away -- the Democratic Party in Maine. But Estruth was astonished recently to hear that the Maine party's donation involved a money swap with the Democratic Party back in his home state of California.

In the bizarre calculus of campaign finance -- where not all dollars are equal -- the Estruth contribution is but one example of the barter between party committees trying to get not just dollars, but the right kind of dollars. They have even been willing to pay each other a premium to get what they need.

Party officials defend the practice, saying their national and state committees are members of the same team. And a Federal Election Commission spokesman says exchanges between party committees are legal. But campaign finance watchdog groups say the political money bazaar is yet one more attempt to get around laws that were meant to restrict the kind of contributions that make their way into federal elections.

"It's like spinning straw into gold," said Donald Simon, executive vice president of Common Cause.

Estruth is also troubled by the money swaps, including the one that benefited his campaign. "It shouldn't happen that way," he said. "I don't think that's in the spirit of the law."

To understand the craze for the kind of dollars that parties needed most -- called "hard money" -- requires a primer in campaign finance. Hard money -- raised according to strict federal limits on the size and sources of contributions -- is the only money that may be spent on federal campaigns. An individual may give only \$ 5,000 a year in hard money to a state party committee.

Parties may also accept "soft money," which can be given in unlimited amounts by a

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wider range of sources. National parties and some state committees can even accept soft money from corporations, which are barred from giving hard money directly to congressional and presidential campaigns. Soft money can be used only for certain party activities, but often only in combination with hard money. That was particularly true for "issues" advertisements, which parties used in blatant attempts to bolster the image of their presidential and congressional candidates without directly asking for votes.

The barter in hard and soft money was yet another creative way that candidates and their parties coped during the most expensive election in U.S. history. States such as Maine, where parties sometimes had a surplus of coveted hard money, found themselves fielding requests for trades from all over the country.

"When you look at the money going back and forth, it makes it appear like a laundering thing, but it's not like that," said Kevin Mattson, former executive director of the Maine Democratic Party. "When you're in the business it seems a lot more regular. . . . It's almost to me like an accounting thing."

Records show that Democrats and Republicans both engaged in such swaps.

The trade in hard dollars attracted little notice during the campaign, in part because only half of each state-to-state party exchange -- the movement of hard dollars -- can be seen on a computerized campaign finance database maintained by the Federal Election Commission. The Washington Post found other pieces of the puzzle -- the movement of soft money -- in a review of state campaign finance records and interviews with party officials.

For example, on May 2, 1996, the Maine Democratic Party shipped \$ 15,000 in hard money to the Nebraska Democratic Party. The Nebraska party needed the money, according to a party official, to help pay for an ad campaign benefiting Gov. Ben Nelson, who was running for Senate.

On the same day, Nebraska shipped Maine \$ 16,500 in soft money. Mattson, of the Maine party, said the extra \$ 1,500 was a 10 percent premium, reflecting the higher value of hard dollars, which are harder to raise.

The Florida Democratic Party made out even better in an exchange on the same day. It shipped \$ 10,000 in hard money to the Nebraska party and got \$ 12,000 in return, according to federal and state campaign finance records.

"We're affiliated committees and we're contributing to each other's purposes," said Tricia Bruning, executive director of the Nebraska party. "We all have the same objective of electing Democrats to office. In the big ball of campaign finance reform, this is nothing."

Mattson, who is now chief of staff in Maine's House majority office, said the state party sometimes had a surplus of hard money through a combination of thousands of small donors, a national telemarketing program called "Dollars for Democrats," direct mail and a tax return checkoff.

State party officials from around the country would get to know each other at national gatherings, he said, and he would get calls from them two or three times a month looking for help. The Maine party could comply only a few times a year, he

said, and the Nebraska exchange was one of those. He said there was an assumption in such situations that a premium would be involved.

Not all exchanges were between state parties.

While national party committees routinely sent state parties large sums of hard and soft money during the last campaign, particularly to pay for issues ads, FEC records show some occasions when hard dollars would flow from a state party to a national committee.

For instance, in addition to the scores of hard and soft money contributions that the Democratic National Committee made to the Ohio Democratic Party over the past two years, there were several times when hard money moved the other way. The Ohio party made hard money transfers of \$ 20,000 to \$ 50,000 to the DNC at about the same time the state party received soft money transfers from the DNC that were exactly 10 percent higher, and even 20 percent in one case, according to FEC and state campaign finance records.

Ohio party Chairman David J. Leland said in a recent interview that the Ohio party might "sell" hard money to the DNC, or "swap" it. "We make money for Ohio Democrats doing that," he said, with the DNC sending back soft money "plus a percentage."

Campaign finance records also show occasions when Republican state party committees exchanged money with the Republican National Committee. For example, last July 23, the Michigan party shipped \$ 100,000 in hard dollars to the RNC and received \$ 150,000 in soft dollars.

In the case of the Estruth contribution, Mattson said, the Maine Democratic Party received no premium.

Mattson said a California party official called and asked if the Maine party had any hard money to spare for Estruth. Mattson recalled that he said yes, but wanted California to send \$ 2,500 in soft money in return.

On Dec. 7, 1995, the California party sent \$ 2,500 to the Maine party, which sent \$ 2,500 to Estruth. Estruth, who lost the election five days later, also lost the fund-raising war, which was fought in part with the help of Democratic operatives sent from Washington to gather contributions. The candidate said he lent his campaign a large sum at the urging of the "Democratic apparatus" and didn't receive enough contributions to cover what he called "a very expensive learning experience."

Maine's exchanges with other state parties went both ways by the end of the year. After the 1996 election, Mattson said the state party had plenty of soft money but a shortage of hard money and needed a combination of both to pay its bills. So he called around, and finally found one state party, in Tennessee, with hard money to spare. He said the Maine party sent \$ 24,000 in soft money and got \$ 20,000 in hard money in return.

**MAINE DEMOCRATIC PARTY SWAPS 'HARD,' 'SOFT' MONEY Portland Press Herald
(Maine) March 2, 1997, Sunday,**

**Copyright 1997 Guy Gannett Communications, Inc.
Portland Press Herald (Maine)**

March 2, 1997, Sunday, CITY EDITION

SECTION: INSIGHT, Pg. 2C, WASHINGTON WATCH

LENGTH: 1130 words

HEADLINE: MAINE DEMOCRATIC PARTY SWAPS 'HARD,' 'SOFT' MONEY

BYLINE: Steve Campbell is The Portland Newspapers' Washington; correspondent.

DATELINE: WASHINGTON

BODY:

Two years ago, a stockbroker from San Jose, Calif., named Jerry Estruth ran for Congress and received a \$ 2,500 campaign contribution from the Maine Democratic Party.

He assumed the Maine Democrats supported him because they liked what he stood for. But that wasn't the motivating factor for the contribution.

According to a recent article in The Washington Post, the donation was part of a money swap between the Democratic parties in California and Maine in an effort to skirt campaign finance laws.

As the Post reported, to understand the swap requires an understanding of the two types of money in politics, known as "hard money" and "soft money."

Campaigns for Congress are funded with "hard money," and there are limits on the amounts and sources of money that can be donated to candidates.

Political parties can accept so-called "soft money," which can be given in unlimited amounts by a wider range of sources. For instance, some political parties accept soft money from corporations, which are barred from giving money directly to congressional and presidential candidates. Soft money can be used only for certain party activities.

Here's how the swap took place:

The California Democratic Party couldn't donate soft money to Estruth's campaign for Congress, because soft money can't be used in federal campaigns. Maine had hard money to spare. So, California sent Maine \$ 2,500 in soft money, and Maine sent Estruth \$ 2,500 in hard money.

Often, political parties will pay a premium for hard money, because the federal limits make it more difficult to raise.

For example, the Post reported that last May, the Maine Democratic Party shipped \$

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15,000 in hard money to the Nebraska Democratic Party. The Nebraska party needed the money to help pay for an advertising campaign benefiting Gov. Ben Nelson, who was running for the U.S. Senate.

On that same day, Nebraska shipped Maine \$ 16,500 in soft money. The extra \$ 1,500 was a 10 percent premium, which reflected the higher value of hard money.

"When you look at the money going back and forth, it makes it appear like a laundering thing, but it's not like that," Kevin Mattson, the former executive director of the Maine Democratic Party told the Post. "When you're in the business it seems a lot more regular. . . . It's almost to me like an accounting thing."

The practice is legal, but public interest groups say the money swap is another example of political parties getting around laws meant to restrict the size and types of contributions in federal campaigns.

"It's like spinning straw into gold," said Donald Simon, executive vice president of Common Cause.

The California candidate who received the money from the Maine Democratic Party doesn't like the money swap either. "It shouldn't happen that way," said Estruth, who lost his 1995 race. "I don't think that's in the spirit of the law."

Maine Greens set agenda

The Maine Green Party has released its legislative agenda for the new year, and it includes support of a bill to limit money that can be spent on citizen-initiated campaigns in Maine.

The Greens have also embraced proposals in the Legislature to eliminate paper mill dioxin, prohibit clearcutting, and permit the use of marijuana for medical purposes.

The party opposes a bill to prohibit the gathering of signatures at the polls.

Snowe sponsors proposals

Also on the legislative front, Sen. Olympia Snowe has sponsored a number of proposals during the first few weeks of the congressional session. Among them:

Legislation to assist people who have lost their jobs from military base closings. The bill would create targeted tax credits to encourage retraining and hiring of defense workers.

Legislation to create a coalition of 12 state governments to tackle trade issues facing Maine and other states bordering Canada.

Legislation to ensure that doctors are not pressured by insurance companies to release breast cancer patients before it is medically appropriate.

That bill would also require insurance companies to cover the costs of breast reconstruction following cancer surgery, and require insurance companies to pay full coverage for secondary consultations whenever cancer has been diagnosed or treatment recommended.

Decision on judge due

Here's the latest on the search to name a new Maine justice to the U.S. Circuit Court of Appeals in Boston.

Harold Pachios, a prominent Portland lawyer, has told the White House that he is no longer interested in the post.

Pachios was one of 10 candidates who applied for the judgeship, and several well-known Democrats in Maine had lobbied the White House for his appointment.

But Pachios withdrew his application one month after a citizens' panel recommended the appointment of either Supreme Court Justice Kermit Lipez of South Portland or Bangor lawyer George Singal.

Sources say the president will probably name either Lipez or Singal within a week or two. The new judge will succeed Judge Conrad Cyr of Bangor.

Allen may be branded

A national survey issued by a term-limits group shows that Rep. Thomas Allen of Maine is one of 18 members of Congress who could be branded on the 1998 ballot as an opponent of term limits.

Voters in nine states, including Maine, have approved a requirement that a notation appear on the ballot next to the name of any representative who failed to follow voters' wishes on term limits.

Recently, Allen did just that. He voted against term limits for members of Congress, even though Maine voters have supported term limits.

The notation will appear next to Allen's name on the ballot in 1998, unless the courts declare the law unconstitutional. And that could happen.

The Arkansas Supreme Court rejected a similar law as a back-door attempt to amend the Constitution. Last week, the U.S. Supreme Court declined to review the Arkansas case, which came as a setback to the term-limits movement.

On the lighter side

Defense Secretary William Cohen has shelved plans to write a new mystery thriller and a movie script.

Documents filed with the federal government reveal that Cohen flew to the French Riviera last summer for a four-day "private trip to research a forthcoming novel."

The \$ 5,800 trip was paid for by Schuhly Film Production Company, which is run by Thomas Schuhly, a German movie producer and bodybuilder who has referred to himself as the "Rambo of film production."

For inquiring movie fans, Schuhly was executive producer of "The Name of the Rose," a 1986 movie starring Sean Connery playing a crime-solving monk in a

medieval monastery.

Schuhly approached Cohen about the book and movie project. But given his new assignment at the Pentagon, Cohen has put the plan on hold.

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Soft Money Issue In DNC CNN April 24, 1998; Friday 5:05 pm Eastern Time

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CNN**

SHOW: CNN INSIDE POLITICS 17:00 pm ET

April 24, 1998; Friday 5:05 pm Eastern Time

Transcript # 98042404V15

TYPE: ANALYSIS

SECTION: News; Domestic

LENGTH: 420 words

HEADLINE: Soft Money Issue In DNC

GUESTS: LEXIS-NEXIS Related Topics ♦ Full Article ♦ Related Topics Overview

This document contains no targeted Topics.

BYLINE: Judy Woodruff, Brooks Jackson

HIGHLIGHT:

The financially strapped DNC reportedly has swapped funds with at least a dozen state Democratic parties in order to avoid restrictions on the use of soft money for federal campaigns. "The Washington Post," who reported the story, says the swaps are legal and have happened before, but never on such a large scale.

BODY:

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

JUDY WOODRUFF, HOST: Now, to the Democratic National Committee's budget. The financially strapped DNC reportedly has swapped funds with at least a dozen state Democratic parties in order to avoid restrictions on the use of soft money for federal campaigns.

"The Washington Post" says campaign finance reports show that the DNC has given state parties more than \$1 million in so-called "soft money." In return, the "Post" says that state parties have sent the national committee "hard money," which the DNC can use for any purpose. The state parties reportedly keep a 10 to 15 percent commission for their trouble. The "Post" says the swaps are legal and have happened

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before, but never on such a large scale.

Let's bring in our money trail expert Brooks Jackson to flush out this story.

Brooks, just a quick refresher, what's the difference between soft and hard money?

BROOKS JACKSON, CNN POLITICAL ANALYST: Right, in 25 words or less too, right?

WOODRUFF: Yes.

JACKSON: Well when it comes to political parties, hard money is money that can be used for any purpose. Legally for federal campaigns -- Senate, House, presidential campaigns. And the restrictions are: no money from unions, no money from corporations. And from individuals, no more than \$20,000 per year; from political action committees, no more than \$15,000 per year. That's hard money and it's harder to raise than soft money.

WOODRUFF: Brooks, why would the DNC do this? What does this permit them to do that they couldn't otherwise have done?

JACKSON: Well hard money is, as you said, more usable for anything. Soft money is easier to raise because it's easier, relatively speaking, to get a \$100,000 check from a labor union than five \$20,000 checks from individuals. But it's not as useful because it can only spent in a certain restricted way. So what the DNC is doing is swapping easy-to-raise money that is not very useful, for hard-to-raise money that they can use for any purpose.

WOODRUFF: And again, legal but the biggest amount this has ever been done. That's ever been done.

JACKSON: Has not been done on that scale before and comes at a particularly inopportune time for Democrats. When their Senators and House members are almost unanimously calling for an end to soft money as a part of campaign finance reform, their very party is uses it to the max.

WOODRUFF: All right. Brooks Jackson, thanks.

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***DNC Swaps Funds With Its State Affiliates; Exchange Increases Latitude in Spending
By Avoiding Limits The Washington Post April 24, 1998, Friday, Final Edition***

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April 24, 1998, Friday, Final Edition

SECTION: A SECTION; Pg. A01

LENGTH: 1302 words

**HEADLINE: DNC Swaps Funds With Its State Affiliates; Exchange Increases Latitude
in Spending By Avoiding Limits**

BYLINE: Scott Wilson, Washington Post Staff Writer

BODY:

A financially strapped Democratic National Committee has enlisted at least a dozen state parties -- including Maryland's -- in an effort to avoid limits on the use of large contributions for federal campaigns, a Washington Post computerized analysis of campaign finance reports shows.

In recent months, the DNC has collected more than \$ 1 million from labor unions, corporations and wealthy individuals that cannot be used directly for congressional and presidential races and handed that restricted money over to the state parties. In return, the state parties have sent back to the national committee unrestricted funds that can be spent on those contests, keeping a 10 to 15 percent commission for their assistance.

The DNC-engineered swap is one of the most aggressive to date and comes as the party, facing a multimillion-dollar debt, is eagerly seeking funds to finance congressional election campaigns less than seven months away. But campaign-finance reform advocates say the tactic, while legal, renders meaningless the federal distinction between "soft money" campaign funds whose use is sharply restricted and unrestricted "hard money," providing the latest evidence yet of the need to tighten federal campaign finance laws.

"It shows the porousness of the system and exposes the myth that there is some separation between hard and soft money," said Don Simon, executive vice president of the watchdog group Common Cause.

DNC general counsel Joe Sandler, however, described the transfers as a way to ensure that "each party has more of the kind of money it needs," adding, "In our view, it's not only absolutely legal, but it's absolutely appropriate and ethical in every respect."

House Republican leaders this week agreed to schedule votes on stalled legislation that would effectively curb the money-swap practice and fund-raising abuses, by banning outright "soft money" donations to political parties.

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Both political parties have previously avoided limitations on the use of soft money by funneling it through their state party affiliates to pay for advertising that indirectly promotes congressional and presidential candidates. In past election cycles, the DNC has orchestrated money swaps from one state party to another, and both parties have conducted limited swaps between their national committees and state affiliates. But the recent money exchanges between Democratic national and state party committees has never been conducted on such a large scale.

Hard money tends to be more valuable to national parties. It can be used for any purpose, including direct help for congressional and presidential candidates. But they can raise hard money only in limited amounts -- \$ 20,000 a year from any individual and \$ 15,000 a year from any political action committee. Unions and corporations are prohibited from giving to federal races.

By contrast, soft money can be collected in unlimited sums from any entity, including unions and corporations. But it cannot be spent directly on behalf of candidates for federal office. Instead, soft money can only be used to cover a party's administrative costs, get-out-the-vote efforts, and other general activities. State parties often find they can make better use of soft money under the separate state rules they must abide by, providing national parties with an outlet for the money they raise.

Last year, national Democratic committees raised \$ 27 million in soft money, while Republican national committees collected \$ 40.4 million -- record totals for off-election years. Among the largest soft-money donors were tobacco companies Philip Morris and R.J. Reynolds, MCI Communications Corp., Walt Disney Co., and the oil concern Atlantic Richfield Co.

With a multimillion-dollar debt and a donor base far smaller than the GOP's, the DNC finds itself especially short of the hard money it will need to help finance the 1998 campaign. Its most recent report to the Federal Election Commission shows the party has a \$ 6.7 million debt, which will require mostly hard money to pay off.

To help alleviate the crunch, the DNC has approached its state affiliates to, in effect, buy state hard money with national soft money reserves. To each transaction, the DNC tacks on a 10 to 15 percent commission paid in soft money. The state parties can use the soft money for general costs or, in some cases, on behalf of state candidates.

Since January 1997, the DNC has shipped state committees soft money in amounts ranging from \$ 11,000 to \$ 172,500 and received equivalent sums of hard money -- less the commissions -- in return, sometimes within days.

Fred Wertheimer, of Democracy 21, a nonprofit advocating campaign-finance reform, said the tactic "just reveals that the whole thing is a game and that the principal goal involved here is a coordinated effort to get soft money into federal elections."

"The notion of purchasing campaign contributions is par for the course in terms of new ideas used to try to evade the campaign finance laws," Wertheimer said.

The Republican National Committee engaged in similar exchanges with state parties during the 1996 election but on a far smaller scale. Campaign finance reports show no direct exchanges this time, although the RNC has received one-way hard money transfers totaling \$ 105,000 from two state parties.

In the past, national parties have used state affiliates in a variety of ways. In 1996, for example, the DNC sent state parties at least \$ 32 million in soft money to pay for ads that indirectly promoted President Clinton. The system has, in fact, become a cash cow for some state parties.

For example, the Maryland Democratic Party has turned a \$ 16,400 profit during the last three years through the exchanges. It sent at least \$ 122,000 to the DNC in hard money raised from Maryland individuals and political action committees, and in return received \$ 138,400 in soft money from the national committee. Campaign records do not show Democratic Party committees in the District of Columbia or Virginia exchanging money with the DNC.

More than half the money exchanged by Maryland Democrats came in the last year and was used by the state party to pay staff salaries, office rent and other administrative costs that consume the bulk of a party's budget in off-election years, according to finance reports.

"We're all part of the same party," said Peter B. Krauser, the state party chairman. "It's important to help Democrats get elected throughout the country."

Connecticut and Alaska have banned soft money transfers between national and state party committees, primarily to curb the influence of federal money on state campaigns. Before a ban in its state was approved last month, the Connecticut Democratic Party turned a \$ 6,300 profit last year by selling \$ 63,000 in hard money to the national committee.

"We've got to scratch for every nickel and dime," said Robert Ives, executive director of the Connecticut Democratic Party.

A computerized analysis of state and federal campaign finance reports shows that the exchanges occurred to the greatest degree in Texas, Michigan, Minnesota and Ohio, reports show.

Take the case of Texas. On June 17, 1997, the Texas Democratic Party received a check for \$ 115,000 from a DNC soft money account. Two days later, \$ 100,000 in hard money arrived at the DNC from the Texas party.

"We've both called each other. One time, they [the DNC] called and needed to make payroll, so we helped them out there," said Steve McDonald, comptroller of the Texas Democratic Party, which last year made \$ 37,500 by shipping the DNC \$ 250,000 in hard money. "We plan on doing this as much and as often as we can."

***Making 'Hard Money' Easier; GOP Panel Finds a Creative Way to Bypass Limitations
The Washington Post July 30, 1999, Friday, Final Edition***

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July 30, 1999, Friday, Final Edition

SECTION: A SECTION; Pg. A27; THE FEDERAL PAGE

LENGTH: 848 words

HEADLINE: Making 'Hard Money' Easier; GOP Panel Finds a Creative Way to Bypass Limitations

BYLINE: Susan B. Glasser, Washington Post Staff Writer

BODY:

Sen. Dan Coats (R-Ind.) had more than \$ 400,000 left in his campaign account last year--and a plan for how to spend it.

For years, Coats had preached the virtues of "civil society." Now that he was leaving the Senate, he wanted to set up a foundation to continue his push for "American renewal." But Sen. Mitch McConnell (Ky.), the head of the Senate GOP's campaign arm, had a different idea for Coats's bulging bank account.

McConnell's National Republican Senatorial Committee was flush with "soft money"--the unlimited contributions that can't be spent directly on federal elections. But McConnell was eagerly searching for more valuable "hard money" that could go right to Senate candidates, and Coats had that in abundance.

And so they cut an unorthodox deal--even by the standards of a political world where complex financial transactions have become commonplace.

Under the terms of the complicated swap, the Republican Party received the coveted \$ 400,000 in hard money from Coats's campaign last July, in plenty of time to spend it on 1998 Senate races. The payback didn't come until June 11 of this year, according to newly released campaign finance reports, when the NRSC wrote Coats a \$ 400,000 soft money check to start his new "Foundation for American Renewal."

This elaborate money shuffle reflects a new political economy in Washington, where the two political parties are engaged in ever more creative ways of raising hard money even as they are awash in less useful soft money contributions. Party committees can raise hard money in maximum chunks of \$ 20,000 from individuals and \$ 15,000 from political action committees; in contrast, they can take soft money directly from corporations or labor unions as well as individuals--without any limit.

"As denoted by its name, hard money is harder to raise and far more useful than soft money," said election lawyer Kenneth A. Gross. "So it's not surprising that the party committees would want to capture as much hard money as they possibly can."

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Already this year, the House GOP campaign committee has traded \$ 2.5 million in soft money to the Republican National Committee in exchange for an infusion of \$ 1.8 million in hard money.

But even with today's dizzying array of transactions, the Coats deal stands out as a legal novelty, since it involves a foundation that is allowed to take money from the GOP while prohibited by law from engaging in any partisan activities.

"This is the first time I've heard of this particular kind of grasping for hard dollars," said Frances Hill, a University of Miami law professor who has studied the links between nonprofits and political groups.

"There was no quid pro quo here, but it seemed to make practical sense," said Coats, now a special counsel at the D.C. law and lobbying firm Verner Lipfert and a leader of Dan Quayle's presidential campaign. "I had hard money; they had a shortage. They had the soft money."

The new foundation, Coats said, will focus on the role that "nongovernmental volunteer organizations can play in addressing major social problems." Coats stressed that "it won't be used for political purposes, direct or indirect."

Right now, the NRSC is the only significant source of funding for the project, which is being managed by the Hudson Institute, a conservative think tank in Coats's home town of Indianapolis. Coats said about \$ 100,000 has been raised from other sources, adding that he planned a direct-mail fund-raising appeal and Indiana dinner for the project this fall.

The only benefit for Republicans, Coats said, was in his group's ability to spur debate about "one of the major issues of the party"--how to move away from government-provided social services and toward private-sector solutions.

McConnell declined to comment on the swap. NRSC spokesman Stuart Roy confirmed the arrangement, saying that Coats's foundation has "no partisan purpose."

Although several legal experts wondered about the possible tax implications for the NRSC of giving money to the Coats foundation, NRSC general counsel Craig Engle said IRS rulings allow such transfers. "Political party organizations may donate money to tax-exempt charities that promote similar positions on important public issues without having to pay federal taxes on those donations," he said.

One prominent election lawyer said he has advised clients not to take part in such swaps, not because they are illegal but because "I don't like the appearances of it." Republicans, however, argue that their creative trading of soft money for hard money simply showcases the need for McConnell's pet legislative project: an increase in the hard money contribution limits.

"The party committees are under an enormous amount of pressure to come up with hard money," said election lawyer Clara Mitchell. "If what people want is less soft money in the system, then they should open the door to more hard money so the parties aren't looking for these clever ways to get it."

GOP Continues To Outraise Democrats; NRSC Nears \$8 Million National Journal's CongressDaily May 22, 2001

**Copyright 2001 The National Journal Group, Inc.
National Journal's CongressDaily**

May 22, 2001 10:30 am Eastern Time

EDITION: am

SECTION: CAMPAIGN FINANCE

LENGTH: 450 words

HEADLINE: GOP Continues To Outraise Democrats; NRSC Nears \$8 Million

BODY:

The National Republican Senatorial Committee continued to outraise the Democratic Senatorial Campaign Committee last month, enjoying a huge advantage over Democrats in its massive war chest.

According to disclosure reports detailing financial activity during April, the NRSC raised just under \$1.7 million in hard money, compared to the DSCC, which reported raising slightly less than \$1 million last month.

The figures include hard-money transfers from affiliated state party committees: \$411,000 in transfers to the NRSC and \$203,000 to the DSCC.

Senate Republicans ended the period with \$7.7 million in hard money on hand. Senate Democrats trailed with \$612,000 on hand.

The DSCC also still carries a \$1.75 million hard-money debt from the 2000 cycle, but continues to chip away at it, having made a \$250,000 payment last month.

Republicans also collected more soft money than their Democratic counterparts. During April, the NRSC raised \$1.3 million in soft money, but ended the month with just \$367,000. The DSCC raised \$571,000 and reported just over \$3 million in soft money on hand.

However, a direct comparison is complicated a loan and by a series of transfers between the NRSC and Republican state parties.

Among the transfers, the NRSC last month sent \$108,000 in soft money to Washington state Republicans and \$240,000 to Florida Republicans.

During the same period, the NRSC received \$90,000 from Washington Republicans and \$212,000 from Florida Republicans in hard-money contributions.

An NRSC spokesman confirmed the transfers, but said they were not "quid pro quo" swaps of soft money for hard money--the latter of which can be more easily spent by the federal committee.

Although party committees frequently transfer money among themselves, the NRSC

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has made a number of such transfers over the past four months.

The DSCC's April report also showed Senate Democrats transferring \$120,000 in soft money to New York Democrats, while receiving \$100,000 in a hard-money transfer.

The NRSC also reported taking out a \$100,000 soft-money loan in April, but the committee also made \$700,000 in payments on previous draws on its line of credit.

Among other soft-money transfers, the NRSC report also showed a total of \$425,000 in transfers from the 2001 President's Dinner Committee, which is organizing the annual joint Senate- House fundraising dinner June 27.

Although the figures are not included in the April report, a DSCC spokeswoman noted Senate Democrats had collected \$2.75 million in hard and soft money in its "Taste of the States" event last week. -- By Mark Wegner

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**Blagojevich, DCCC Swap Funds; Blagojevich Nets \$300,000 in Soft Money Roll Call
February 7, 2002 Thursday**

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February 7, 2002 Thursday

LENGTH: 1390 words

**HEADLINE: Blagojevich, DCCC Swap Funds;
Blagojevich Nets \$300,000 in Soft Money**

BYLINE: ByChris Cillizza

BODY:

In a practice that is perfectly legal yet rarely employed successfully, Illinois gubernatorial candidate and Rep. Rod Blagojevich (D) swapped hard money from his House campaign committee for a larger soft-money donation from the Democratic Congressional Campaign Committee to his gubernatorial campaign, according to newly released Federal Election Commission reports.

Year-end FEC reports show that on Dec. 8, Blagojevich handed over \$500,000 in excess campaign funds from his federal or Congressional campaign account to the House Democratic campaign arm. Five days later, the DCCC transferred \$900,000 in nonfederal soft money to Blagojevich's state campaign account to aid his gubernatorial bid, essentially giving Blagojevich a \$300,000 donation. There are no contribution limits governing state campaign accounts under Illinois law.

"It is standard procedure for the DCCC and all the party committees to make contributions of nonfederal money," explained DCCC Communications Director Jenny Backus.

Blagojevich's gubernatorial campaign spokeswoman, Amanda Crumley, agreed that "This is something that the DCCC routinely asks retiring Members to do."

But no other such trades have taken place between the House Democratic campaign arm and other Democratic gubernatorial candidates this cycle, the DCCC confirmed. Reps. John Baldacci (D-Maine), David Bonior

(D-Mich.) and Tom Barrett (D-Wis.) are also running for governor this year.

And campaign finance reform experts said that the trade, coming on the eve of the House vote on campaign finance reform next week, shows how eager the party committees are to stock their coffers with more useful hard dollars, which can be spent on direct advocacy for House candidates. Current campaign finance reform legislation would ban soft money. The DCCC had \$3.6 million more in soft money than in hard dollars in its campaign account Dec. 31.

"The party committees are trying to bring on as much hard money as they can" before campaign finance reform passes, Center for Responsive Politics Director Larry Noble said.

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The Blagojevich transfer "shows that they are using every method they can to maximize the hard money and put the soft money to good use," he added.

In the 2000 cycle, the National Republican Congressional Committee gave \$750,000 in soft money to Rep. David McIntosh's (R-Ind.) gubernatorial campaign account in exchange for a \$500,000 contribution of hard money to the committee.

In Alabama, where Rep. Bob Riley (R) is running for governor, his opponents in the June 4 Republican primary are attempting to make political hay out of an alleged hard-money/soft-money swap between Riley's federal campaign committee and the NRCC.

On Dec. 3 the NRCC transferred \$360,000 in nonfederal dollars to Riley's gubernatorial campaign, FEC reports show. He then sent \$50,000 in federal money to the committee on Dec. 27.

The NRCC contribution was the largest single donation to Riley's campaign and constituted almost 20 percent of the total funds he has raised for his race. Earlier last year Riley had pledged that although under state law he could transfer money in his federal campaign account to a state campaign account, he would not do so.

Both the NRCC and Riley's campaign insisted that the hard money the Congressman donated was nothing more than his annual committee dues and was unrelated to the committee's decision to send him a large soft money contribution.

"When Congressmen do not have opponents, the committee asks them for large contributions," said Riley campaign manager J. Sam Daniels. He added that in the 2000 cycle Riley gave \$45,000 in hard money to the NRCC.

"The \$50,000 Riley paid in December were his dues, which every Member of Congress pays us," NRCC Communications Director Steve Schmidt said.

No other Members running for higher office have paid their dues to the NRCC yet this cycle, although retiring Reps. Jim Hansen (Utah) and Steve Horn (Calif.) gave a combined \$25,000 in hard money to the committee from their coffers in 2001.

The NRCC was steadfast in its decision to send money to Riley, despite the pending Republican gubernatorial primary.

"The NRCC believes that Riley would be the strongest candidate at the top of the ticket," Schmidt said. "We are interested in making sure that we can run the most competitive race possible in the open 3rd district." Riley has represented the 3rd district since 1996.

As for the \$124,000 remaining in Riley's federal campaign account, Daniels said that Riley "plans on using that money to help Congressional candidates around the nation."

State Rep. Mike Rogers (R), who is the leading GOP candidate in Riley's old district, would be a "good example" of one of the candidates whom Riley will spend the remainder of his federal money on, according to Daniels.

Not everyone is so sanguine about the explanation provided by the NRCC and Riley's

campaign.

One Republican source familiar with the race asserted that the Congressman "carefully calculated" a transfer of hard money to the NRCC in exchange for a much larger sum of soft money.

"[Riley] made a big return on his investment," said the source, who is aligned with a Riley foe. He intimated that what's left in the lawmaker's campaign coffers is also headed to the NRCC in the near future.

"I have no problem with the NRCC getting every bit of hard money before soft money goes out of business," noted the source, "just not in contested primaries."

Riley will face off against businessman Tim James and Lt. Gov. Steve Windom in the Republican primary.

In Illinois, Blagojevich's campaign received a significant boost from the DCCC just prior to the state's March 19 primary, when he will compete for the Democratic nomination with former state Attorney General Roland Burris and former Chicago public schools CEO Paul Vallas.

Blagojevich has raised more than \$2 million for his gubernatorial bid in the last six months of 2001 and had \$3.7 million in state funds left to spend on the race at the end of last year. Although under state law the Congressman could have transferred the remains of his federal war chest to a state account when he decided to run for governor, he decided against that option. By not transferring the money directly to his state account, Blagojevich essentially traded \$600,000 for \$900,000.

Crumley described Blagojevich's decision to swap his hard money for the DCCC's soft money as a "win-win proposition."

"Those federal dollars are hard to raise, and he's happy they are going to be out there helping Democrats to win back the House," she said.

DCCC spokeswoman Kim Rubey said that Blagojevich "made an exceptional show of support to our committee in our efforts to take back the House this cycle, and we had the resources to respond in kind." Blagojevich still has \$414,000 in his federal account, but has not decided how to spend it yet, according to Crumley.

Despite sending nearly \$1 million to the Blagojevich campaign, Rubey insisted that the money "is not an endorsement."

One Republican is not so quick to accept the DCCC's explanation of its role in the Illinois gubernatorial primary, however.

"It is remarkable that the DCCC would insert themselves into a Democratic primary for governor and take sides against an African-American candidate," jabbed one GOP strategist. Burris, who is black, has twice before run losing gubernatorial campaigns.

"It shows that all of their talk of inclusion and outreach to minorities is just lip service," the source added.

Democrats quickly point out that Rep. Jesse Jackson Jr. (D), a prominent black

member of the Illinois delegation, was informed of the transfer to Blagojevich and approved it.

In another case, Rep. Barrett (D), who is pursuing a bid for governor, decided to transfer \$750,000 from his federal campaign account directly into a state campaign account, which is legal in Wisconsin.

When asked whether he considered donating his glut of hard money to the DCCC for a larger soft-money contribution to his gubernatorial campaign, Barrett said, "It didn't occur to me.

"I don't know if I would have done it anyway," he continued. "Having looked at Wisconsin law, I wanted to do it as cleanly as possible.

"We dotted every 'i' and crossed every 't'," he added.

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